

## § 210.35

## 19 CFR Ch. II (4–1–15 Edition)

made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor.

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, he shall grant or deny a motion by issuing an order.

(3) Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

- (i) An official reprimand by the Commission;
- (ii) Disqualification from or limitation of further participation in a pending investigation;
- (iii) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;
- (iv) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;
- (v) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

(d) *Reporting requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to him or her pursuant to the protective order is the subject of:

- (1) A subpoena;

(2) A court or an administrative order (other than an order of a court reviewing a Commission decision);

(3) A discovery request;

(4) An agreement; or

(5) Any other written request, if the request or order seeks disclosure, by him or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

NOTE TO PARAGRAPH (d): This reporting requirement applies only to requests and orders for disclosure made for use of confidential business information in non-Commission proceedings.

(e) *Sanctions and other actions.* After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d) of this section, or it may take other action.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008; 78 FR 23484, Apr. 19, 2013]

### Subpart F—Prehearing Conferences and Hearings

#### § 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

- (1) Simplification and clarification of the issues;
- (2) Negotiation, compromise, or settlement of the case, in whole or in part;
- (3) Scope of the hearing;
- (4) Necessity or desirability of amendments to pleadings subject, however, to the provisions of § 210.14 (b) and (c);
- (5) Stipulations and admissions of either fact or the content and authenticity of documents;
- (6) Expedition in the discovery and presentation of evidence including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(7) Such other matters as may aid in the orderly and expeditious disposition of the investigation including disclosure of the names of witnesses and the exchange of documents or other physical exhibits that will be introduced in evidence in the course of the hearing.

(b) *Subpoenas*. Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to § 210.32(a)(3).

(c) *Reporting*. In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order*. The administrative law judge may enter in the record an order that recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless the administrative law judge modifies the order.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38324, July 7, 2008]

#### § 210.36 General provisions for hearings.

(a) *Purpose of hearings*. (1) An opportunity for a hearing shall be provided in each investigation under this part, in accordance with the Administrative Procedure Act. At the hearing, the presiding administrative law judge will take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act of 1930, and for the purpose of making findings and recommendations, as described in § 210.42(a)(1)(ii), concerning the appropriate remedy and the amount of the bond to be posted by respondents during Presidential review of the Commission's action, under section 337(j) of the Tariff Act.

(2) An opportunity for a hearing in accordance with the Administrative Procedure Act shall also be provided in connection with every motion for temporary relief filed under this part.

(b) *Public hearings*. All hearings in investigations under this part shall be

public unless otherwise ordered by the administrative law judge.

(c) *Expedition*. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties*. Every hearing under this section shall be conducted in accordance with the Administrative Procedure Act (i.e., 5 U.S.C. §§ 554 through 556). Hence, every party shall have the right of adequate notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official*. An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

#### § 210.37 Evidence.

(a) *Burden of proof*. The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility*. Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded as far as practicable.

(c) *Information obtained in investigations*. Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice*. When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections*. Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.